

United States
Circuit Court of Appeals

For the Ninth Circuit.

N. RUDEBECK, R. H. RAMSAY and DORA A.
RAMSAY,

Petitioners,

vs.

W. P. SANDERSON, as Trustee in Bankruptcy of the
NONPAREIL CONSOLIDATED COPPER
COMPANY, a Corporation, Bankrupt, and NON-
PAREIL CONSOLIDATED COPPER COM-
PANY, a Corporation,

Respondents.

In the Matter of the NONPAREIL CONSOLIDATED
COPPER COMPANY, a Corporation, Bankrupt.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of
Law, of a Certain Order of the United
States District Court for the West-
ern District of Washington,
Northern Division.

Filed

AUG 26 1915

F. D. Monckton,

Clerk.

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N. RUDEBECK, R. H. RAMSAY and DORA A.
RAMSAY,

Petitioners,

vs.

W. P. SANDERSON, as Trustee in Bankruptcy of the
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COMPANY, a Corporation, Bankrupt, and NON-
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In the Matter of the NONPAREIL CONSOLIDATED
COPPER COMPANY, a Corporation, Bankrupt.

Petition for Revision

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States District Court for the West-
ern District of Washington,
Northern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

No. —.

In the Matter of the Insolvency of the NONPAREIL
CONSOLIDATED COPPER COMPANY,
Bankrupt.

Notice of Filing Petition for Review.

To W. P. Sanderson, as Trustee in Bankruptcy of the
Nonpareil Consolidated Copper Company, and
to William Hickman Moore, His Attorney, and
to Nonpareil Consolidated Copper Company, and
to Palmer Kennedy, Its Attorney:

You and each of you are hereby notified that on the
17th day of July, 1915, at the hour of ten o'clock in
the forenoon of said day, we will file in the Clerk's
office for the United States Circuit Court of Appeals
for the Ninth Circuit, in the City of San Francisco,
California, the petition for review in the above-enti-
tled cause, a copy of which petition is hereto at-
tached as a part of this notice, and I will then ask
to have the case docketed and the necessary order
made thereon to have such case set down for hearing.

E. H. GUIE,

J. H. GUIE,

Attorneys for Petitioner.

I hereby acknowledge receipt of a copy of the peti-
tion of N. Rudebeck, R. H. Ramsay and Dora A.
Ramsay, stockholders for review herein, and of no-

tie thereof, and the service of the same this 14th day of July, 1915.

WM. HICKMAN MOORE,
Attorney for W. P. Sanderson, Trustee for Bank-
rupt.

Attorney for Nonpareil Consolidated Copper Co.
[1*]

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

No. —.

In the Matter of NONPAREIL CONSOLIDATED
COPPER COMPANY, a Corporation,
Bankrupt.

Petition for Review.

Your petitioners, N. Rudebeck, R. H. Ramsay and
Dora A. Ramsay respectfully show:

1. That there is pending in the District Court of
the United States for the Western District of Wash-
ington, Northern Division, a proceeding in bank-
ruptcy wherein the Nonpareil Consolidated Copper
Company, a corporation organized under the laws of
the State of Washington, with its principal place of
business at Everett, in the said Western District of
Washington, was adjudged bankrupt. The petition
purported to be one in voluntary bankruptcy accord-
ing to Section 3a (5) 30 Stat. 546, as amended by Act
February 5, 1903, c487, 32 Stats. 797, to the effect
that the corporation owed debts which it was unable

*Page-number appearing at foot of page of original certified Petition
for Revision.

to pay in full and that it was willing to surrender all its property for the benefit of its creditors. In default of appearance of adverse parties an adjudication in bankruptcy was made and entered *ex parte* without the taking of any proof of insolvency, and the said respondent W. P. Sanderson was elected trustee in bankruptcy and said W. P. Sanderson is still acting as trustee of said alleged bankrupt estate.

2. That said corporation was adjudged a bankrupt on March 4, 1914. [2]

3. That in the course of said bankruptcy proceedings your petitioners, N. Rudebeck and R. H. Ramsay filed their respective petitions in the said District Court of Washington in said bankruptcy matter, and the petitioner Dora A. Ramsay filed an intervening petition to the petition of R. H. Ramsay, all of said petitions reciting respectively that N. Rudebeck is the owner of five thousand shares of the capital stock in said corporation, and that R. H. Ramsay is the owner of four thousand shares and Dora A. Ramsay the owner of one thousand shares in said Nonpareil Consolidated Copper Company, and that they were such owners of said stock long previous to and at the time of the making and filing of the petition in bankruptcy and the adjudication in bankruptcy, and that as such stockholders they have subsisting interests in the assets and property of said corporation, and that they make and file said petitions as such stockholders for themselves and on behalf of other stockholders similarly situated. That in said petitions it is alleged among other things that the Honorable District Court in which said bankruptcy pro-

ceeding is pending, as appears from the record in said proceeding, did not have jurisdiction to make and enter said order adjudicating said corporation a bankrupt, on the ground and for the reason that the stockholders of said corporation never authorized or empowered the trustees of said corporation to file the petition in bankruptcy therein.

4. That, as appears from said petitions, the said petition in bankruptcy was authorized by resolution of the board of trustees only which was contrary to the laws and statutes of the State of Washington. It further appeared from said petitions of your petitioners that among the assets of said corporation [3] there are 470 acres of valuable timber land on which there is situated about 32 million feet of timber worth at least \$2.00 per thousand; that said timber land is situated in Western District of Washington and that the said timber land and all the assets of said corporation were sold by the trustee in bankruptcy and had been advertised for public sale by the trustee in bankruptcy for the 24th of June, 1915, at two o'clock P. M. of said day and unless ordered and restrained by the said district court the said assets of said corporation would be offered for sale and sold on said day by said trustee in bankruptcy. It was further alleged in said petitions to vacate that the petition in bankruptcy was made and filed in fraud of your petitioners as stockholders and other stockholders similarly situated.

5. It was prayed in said petitions that the order of adjudication entered therein be annulled, vacated and held for naught and that the said trustee in

bankruptcy be enjoined from selling the assets of said corporation and that if a sale be made that such sale be not approved by the Court. That thereupon, upon the filing of said petitions of N. Rudebeck and R. H. Ramsay, the Court issued an order enjoining the referee and the trustee in bankruptcy from proceeding with the sale of the assets of the corporation and assigned a day for the hearing of said petitions to vacate the adjudication in bankruptcy.

6. That thereafter the said trustee in bankruptcy moved to dismiss the petitions of said N. Rudebeck and R. H. Ramsay and the intervening petition of Dora A. Ramsay and to dissolve said restraining order issued as aforesaid, for the reason that it appears upon the face of said petitions that the facts therein stated are insufficient to constitute a valid cause of action or to entitle the petitioners to the relief therein prayed for, or to [4] any relief.

7. That upon hearing being had upon the 8th day of July, 1915, the said Honorable District Court granted said motion to dismiss and dissolve, and made and entered an order on the said 8th day of July, 1915, wherein and whereby it was ordered, considered, adjudged and decreed that the said motions of the said trustee be sustained and said petitions of N. Rudebeck and R. H. Ramsay and said intervening petition of Dora A. Ramsay be and the same were dismissed and the said restraining order theretofore made on the 29th day of June, 1915, be and the same was dissolved and exceptions to the order were allowed these petitioners.

8. Your petitioners charge the fact to be that the

said District Court erred in dismissing their said petitions to vacate the adjudication in bankruptcy, and erred in dissolving said temporary restraining order, and your petitioners are aggrieved thereby.

9. Your petitioners further show that the said District Court committed error in entering the adjudication in bankruptcy herein and that, as appears from the records, the said bankruptcy proceedings on said adjudication in bankruptcy was not authorized by the stockholders of said corporation as is required by the laws and statutes of the State of Washington and that said adjudication was and is void: that under the laws and the statutes of the State of Washington the said fifth act of bankruptcy could not be committed by said board of trustees without authorization from the stockholders of said corporation; that the meeting of the trustees authorizing the making and filing of the petition in bankruptcy was held in the State of Ohio without notice to the stockholders and in fraud of their rights as stockholders.

All of the foregoing facts will be made to appear to your Honors by a transcript of so much of the record in the above-mentioned bankruptcy proceeding as may be necessary to exhibit and explain the manner and form in which the questions of law set forth in this petition arose and were determined, which transcript will be transmitted to this court.

WHEREFORE, Your petitioners respectfully pray that such orders and judgments of the said District Court, as is herein complained [5] of may be reviewed and revised by your Honors according to the merits of your petitioners' contentions and in ac-

cordance with the provisions of the law regarding such proceedings as are herein set forth, and that by the order and decree of this court the said order and judgment of the District Court made July 8, 1915, dismissing the said petitions to vacate and dissolving the said restraining order of June 29, 1915, be reversed, and said District Court direct and enter judgment vacating said adjudication in bankruptcy of said Nonpareil Consolidated Copper Company.

Your petitioners further pray for such other and further relief as the facts in this matter suggest and which to your Honors seem meet.

N. RUDEBECK,
R. H. RAMSAY and
DORA A. RAMSAY,
By E. H. GUIE,
Their Attorney.

E. H. GUIE,
J. A. GUIE,
Attorneys for Petitioners.

United States of America,
State of Washington,
County of King.

N. Rudebeck, being first duly sworn, on oath says: That he is one of the petitioners referred to in the foregoing petition; that he has read the foregoing petition for review and knows the contents thereof and that the matters and things therein contained and set forth are true; that he makes this verification for himself and on behalf of his copetitioners.

N. RUDEBECK,

Subscribed and sworn to before me this 14th day of July, 1915.

[Seal]

E. H. GUIE,

Notary Public in and for the State of Washington,
Residing at Seattle. [6]

[Endorsed]: In the United States Circuit Court of Appeals, for the Ninth Circuit. N. Rudebeck, R. H. Ramsay and Dora A. Ramsay, Petitioners, vs. W. P. Sanderson, as Trustee in Bankruptcy of the Nonpareil Consolidated Copper Company, and the Nonpareil Consolidated Copper Co., a Corporation, Respondents. Petition for Review. [6½]

**[Affidavit of E. H. Dewey Re Service of Notice of
Filing of Petition for Review, etc.]**

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

No. —.

N. RUDEBECK, R. H. RAMSAY and DORA A.
RAMSAY,

Petitioners,

vs.

W. P. SANDERSON as Trustee in Bankruptcy of
the NONPAREIL CONSOLIDATED COP-
PER COMPANY, and the NONPAREIL
CONSOLIDATED COPPER COMPANY, a
Corporation,

Respondents.

In the Matter of MONPAREIL CONSOLIDATED
COPPER COMPANY, Bankrupt.

United States of America,
State of Washington,
County of King,—ss.

E. H. Guie, being first duly sworn, on oath says:
That he is and at all the times herein mentioned was
a citizen of the United States over the age of twenty-
one years, residing at Seattle, in King County,
Washington, and the attorney for the petitioners N.
Rudebeck, R. H. Ramsay and Dora A. Ramsay; that
on the 14th day of July, 1915, he served Notice of
Filing the Petition for Review and the Petition for
Review of petitioners N. Rudebeck, R. H. Ramsay
and Dora A. Ramsay on the Nonpareil Consolidated
Copper Company by depositing a copy of said Notice
and Petition in the United States postoffice at Seat-
tle, Washington, the postage thereon being prepaid
and addressed to Palmer Kennedy, as the attorney
for the Nonpareil Consolidated Copper Company at
Tacoma, Washington, his street number and office
address being unknown to this affiant.

And further affiant saith not.

E. H. GUIE,

Subscribed and sworn to before me this 14th day
of July, 1915.

[Seal]

J. A. GUIE,

Notary Public in and for the State of Washington,
Residing at Seattle. [7]

[Endorsed]: In the United States Circuit Court of Appeals, Ninth Circuit. N. Rudebeck, R. H. Ramsay and Dora A. Ramsay, Petitioners, vs. W. P. Sanderson as Trustee in Bankruptcy, et al., Respondents. Affidavit of Service. [8]

[Endorsed]: No. 2624. United States Circuit Court of Appeals for the Ninth Circuit. N. Rudebeck, R. H. Ramsay and Dora A. Ramsay, Petitioners, vs. W. P. Sanderson, as Trustee in Bankruptcy of the Nonpareil Consolidated Copper Company, a Corporation, Bankrupt, and Nonpareil Consolidated Copper Company, a Corporation, Respondents. In the Matter of the Nonpareil Consolidated Copper Company, a Corporation, Bankrupt. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, of a Certain Order of the United States District Court for the Western District of Washington, Northern Division.

Received July 17, 1915.

F. D. MONCKTON,
Clerk.

Filed July 23, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

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United States
Circuit Court of Appeals

For the Ninth Circuit.

N. RUDEBECK, R. H. RAMSAY and DORA A.
RAMSAY,

Petitioners,

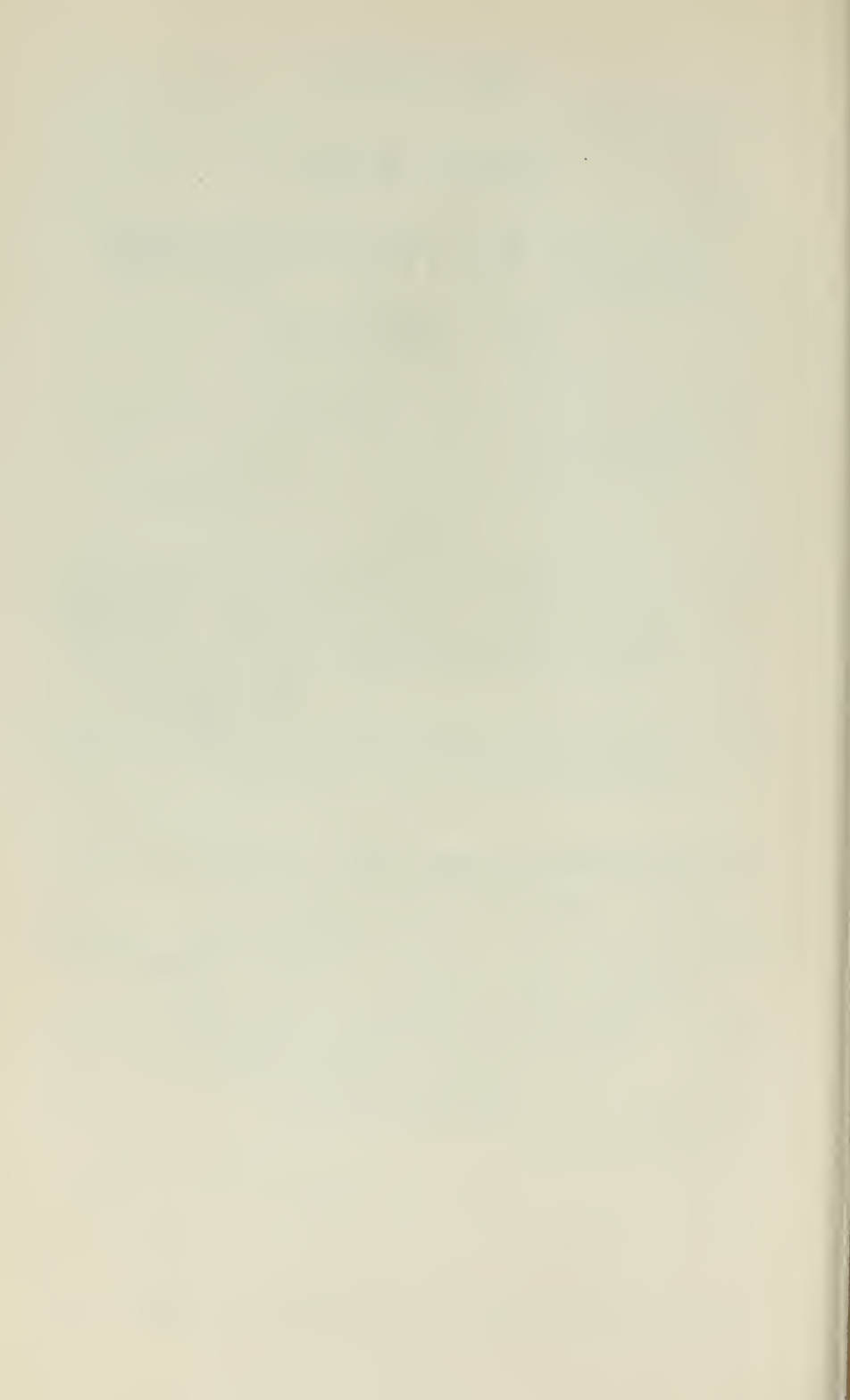
vs.

W. P. SANDERSON, as Trustee in Bankruptcy of the
NONPAREIL CONSOLIDATED COPPER
COMPANY, and the NONPAREIL CONSOLI-
DATED COPPER COMPANY, a Corporation,
Respondents.

In the Matter of the NONPAREIL CONSOLIDATED
COPPER COMPANY, Bankrupt.

**TRANSCRIPT OF RECORD IN SUPPORT OF
PETITION FOR REVISION**

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of
Law, a Certain Order of the United
States District Court for the West-
ern District of Washington,
Northern Division.



*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 5035.

In the Matter of NONPAREIL CONSOLIDATED
COPPER COMPANY,

Bankrupt.

Names and Addresses of Counsel.

E. H. GUIE, Esq., Attorney for Petitioners,
810 Leary Building, Seattle, Washington.

J. A. GUIE, Esq., Attorney for Petitioners,
810 Leary Building, Seattle, Washington.

WM. HICKMAN MOORE, Esq., Attorney for
Trustee,
41 Haller Building, Seattle, Washington.

[1*]

Corporation Petition.

To the Honorable Judge of the District Court of the
United States, for the Western District of Wash-
ington, Northern Division.

THE PETITION of the Nonpareil Consolidated
Copper Company having its principal office at the
City of Everett in the county of Snohomish and State
of Washington in the Western District of Washing-
ton respectfully represents:

That this corporation was organized under the
General Incorporation laws of the State of Wash-
ington and is engaged in the business of mining ore.

*Page-number appearing at foot of page of original certified Transcript
of Record.

That it is neither a municipal, railroad, insurance or banking corporation.

That it has had its principal office for the greater portion of six months next immediately preceding the filing of this petition at 410 American National Bank Building, Everett, Washington, within said Judicial District; that it owes debts which it is unable to pay in full; that it is willing to surrender all its property for the benefit of its creditors except such as is exempt by law, and is desirous of obtaining the benefits of the Acts of Congress relating to bankruptcy; and its board of directors has duly authorized such acts on its part.

That the schedule hereto annexed marked "A" and verified by the oath of your petitioner's president, contains a full and true statement of all its debts and (so far as it is possible to ascertain) the names and places of residence of its creditors and such further statements concerning said debts as are required by the provisions of said Acts.

That the schedule hereto annexed marked "B" and verified by the oath of your petitioner's president, contains an accurate [2] inventory of all its property, both real and personal and such further statements concerning said property as are required by the provisions of said Acts.

Wherefore your petitioner prays that it may be adjudicated by the Court to be a bankrupt within the

purview of such Acts.

PALMER KENNEDY,
Attorney.

NONPAREIL CONSOLIDATED COPPER
COMPANY. [Seal]

By SIMON P. ECKI,
President.

United States of America,
Northern District of Ohio,
Eastern Division,—ss.

Simon P. Ecki does hereby make solemn oath that he is the president of Nonpareil Consolidated Copper Company, the corporation mentioned and described as petitioner in the foregoing petition; that the statements therein contained are true according to the best of his knowledge, information and belief; that the reason why this verification is made by deponent and not by the petitioner herein is that the petitioner is a corporation; and that deponent was duly authorized by resolution of the board of trustees of the said corporation to execute the foregoing petition for and in behalf of the said corporation for the purposes therein set forth.

SIMON P. ECKI.

Subscribed and sworn to before me this 30th day of January, A. D. 1914.

L. ROY RUSONS, [Seal]
Notary Public.

Commission expires June 4, 1916.

[Indorsed]: Petition and Schedules. (Schedules Omitted.) Filed in the United States District Court, Western District of Washington, Feb. 28, 1914, at 3

P. M. Frank L. Crosby, Clerk. By B. E. S., Deputy.
[3]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 5035.

In the Matter of NONPAREIL CONSOLIDATED
COPPER CO.,

Bankrupt.

Adjudication of Bankruptcy.

At Seattle, in said District on the 4th day of March, A. D. 1914, before the Honorable JEREMIAH NETERER, Judge of said Court in Bankruptcy, the petition of said Nonpareil Consolidated Copper Co. that it be adjudicated bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said Nonpareil Consolidated Copper Co. is hereby declared bankrupt accordingly.

Witness the Honorable Jeremiah Neterer, Judge of said Court, and the seal thereof, at Seattle, in said District, on the 4th day of March, A. D. 1914.

[Seal]

JEREMIAH NETERER,

Judge.

[Indorsed]: Adjudication in Bankruptcy. Filed in the United States District Court, Western District of Washington. Mar. 4, 1914. Frank L. Crosby, Clerk. By B. E. S., Deputy. [4]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

In the Matter of the NONPAREIL CONSOLI-
DATED COPPER COMPANY, a Bankrupt.

**Petition [of N. Rudebeck] to Vacate Adjudication of
Bankruptcy.**

Comes now N. Rudebeck and petitions this Court
and respectfully shows:

1. That petitioner previous to the filing of the
petition in bankruptcy and at the time of the filing
of said petition was and now is a stockholder of the
said Nonpareil Consolidated Copper Company and
the owner of five thousand shares of the capital stock
in said company.

2. That on the 4th day of March, 1914, the said
Nonpareil Consolidated Copper Company was ad-
judicated a bankrupt by this Court.

3. That this Honorable Court did not have juris-
diction to make and enter said order of adjudication
on the ground and for the reason that the stockhold-
ers of said corporation never authorized or em-
powered the trustees of said corporation to file the
petition in bankruptcy herein; that no notice was ever
given to the stockholders of the filing of said petition
in bankruptcy nor of the intention of the president
of said corporation or the trustees thereof to make
and file said petition in bankruptcy nor did they
assent thereto, nor did this petitioner have any such
notice.

4. That the said Nonpareil Consolidated Copper Company is a corporation organized under the laws of the State of Washington with its principal place of business at Everett, Snohomish County, Washington.

5. That said corporation, in violation of the statutes of [5] the State of Washington, has not had as one of its trustees a resident of the State of Washington, and all of said trustees, as your petitioner alleges and believes, are and before and at the time of the making and filing of said petition in bankruptcy were nonresidents of the State of Washington; that it does not appear from said petition, filed herein, that said petition in bankruptcy was even authorized by the board of trustees of said corporation excepting that the president recites in his verification to said petition that he was duly authorized by resolution of the board of trustees of said corporation to execute the foregoing petition for and on behalf of said corporation; that said verification to said petition was made in the State of Ohio, to wit, in the Northern District of Ohio, Eastern Division; that no proof was ever made to this Court that any such meeting was ever held by the board of trustees or any resolution adopted authorizing the filing of said petition in bankruptcy; that if any meetings of the board of trustees or stockholders were held such meetings were held outside of the State of Washington and were illegal and void and contrary to the provisions of the statutes governing corporation meetings under the laws of the State of Washington, and said petition was made and filed without the authority of the

stockholders of said company.

6. That on the contrary the stockholders of said corporation at its last annual meeting held in the year 1913, authorized and empowered the said board of trustees to execute a mortgage and bond in the sum of \$130,000 to liquidate its indebtedness and that said board of trustees on the first day of August, 1913, did pass a resolution and did determine to execute such mortgage against its property not to exceed in the aggregate the sum of \$130,000.00 evidenced by bonds as authorized by the stockholders at its last annual meeting aforesaid. [6]

7. That as your petitioner is informed and believes, that was the last meeting ever held by the stockholders of said corporation, and that said trustees disregarded their duties and the order of the stockholders and wholly failed to execute said mortgage and bonds, but without any meeting of the stockholders or notice to the stockholders or authority from the stockholders and without any formal legal meeting of the trustees, the said Simon P. Ecki did verify and file said petition in bankruptcy upon which the order of adjudication was entered herein.

8. That among the assets of said corporation there are 470 acres of valuable timber land on which there is situated about 32 million feet, worth at least \$2.00 per thousand; that said timber land is situated near Index, Snohomish County, Washington; that said timber land and all of the assets of said corporation have been advertised for public sale by the trustee in bankruptcy for the 24th day of June, 1915, at two o'clock P. M. of said day, and unless ordered

and restrained by this Court the said assets of said corporation will be offered for sale and sold on said day by said trustee in bankruptcy.

9. That your said petitioner, N. Rudebeck, makes this petition on behalf of himself as a stockholder, as aforesaid, and on behalf of other stockholders of said corporation similarly situated.

WHEREFORE, Your petitioner prays:

1. That the order of adjudication entered herein be annulled, vacated and held for naught.

2. That the said trustee in bankruptcy be enjoined from selling the assets of said corporation, and that if a sale be made that such sale be not approved by this Court.

N. RUDEBECK,
Petitioner.

E. H. GUIE,
Attorney for Petitioner. [7]

United States of America,
Western District of Washington,
Northern Division,—ss.

N. Rudebeck, being first duly sworn, on oath says: That he is the petitioner named in the foregoing petition to vacate adjudication of bankruptcy; that he has read the same, knows the contents thereof, and believes the same to be true.

N. RUDEBECK.

Subscribed and sworn to this 23d day of June, 1915.

[Seal]

J. A. GUIE,
Notary Public in and for the State of Washington,
Residing at Seattle.

Receipt of a copy and due service hereof admitted
this 24th day of June, 1915.

WM. HICKMAN MOORE.

Attorney for Trustee.

Receipt of a copy and due service hereof admitted
this 24th day of June, 1915.

C. R. HAWKINS,

Referee in Bankruptcy.

By L.

[Indorsed]: Petition to Vacate Adjudication of
Bankruptcy. Filed in the United States District
Court, Western District of Washington. June 24,
1915. Frank L. Crosby, Clerk. By S. E. Leitch,
Deputy. [8]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 5235.

In the Matter of the NONPAREIL CONSOLI-
DATED COPPER COMPANY, a Bankrupt.

Affidavit of N. Rudebeck.

United States of America,
Western District of Washington,
Northern Division,—ss.

N. Rudebeck, being first duly sworn, on oath de-
poses and says: That he is one of the petitioners who
has filed a petition herein for the vacation of the
judgment of adjudication of the defendant as a bank-
rupt; that the allegations contained in said petition
are true; that affiant is the owner of five thousand

shares of the capital stock of said corporation and was such owner previous to and at the time said judgment of adjudication was made and entered herein; that the trustees of said corporation in authorizing the filing of the petition in bankruptcy, if they did authorize the same, did so without the authority of the stockholders and without notice to the stockholders of said corporation and in fraud of affiant as such stockholder and others similarly situated; that no notice was ever given to the stockholders of said corporation of the intention too file and make such petition nor did the stockholders of said corporation ever authorize or consent to the filing of such petition in bankruptcy, and said petition in bankruptcy was made and filed in the above-entitled action without authority and against the law; that affiant shortly after the adjudication of bankruptcy herein, engaged counsel, who was represented to affiant as being learned in the bankruptcy law, to have said judgment of adjudication vacated on the ground that the same was not authorized by the stockholders of this corporation, but affiant was advised by said counsel that it was not necessary [9] to secure such authorization from the stockholders, and relying on said advice until the filing of the petition by the present attorney for affiant, affiant believed that the advice that he received from his former counsel was correct and that it was not necessary for the trustees to have the authorization of the stockholders to file said petition in bankruptcy, and affiant has not been negligent or guilty of laches in the premises.

That previous to and at the time of the filing of

said petition in bankruptcy and at the time the said petition in bankruptcy was authorized to be made and filed by the board of trustees, if it was so authorized, there were no trustees of said corporation who were residents of the State of Washington, but all of the trustees of said corporation were nonresidents and the acts of the said trustees were in violation of the laws of the State of Washington and null and void.

N. RUDEBECK.

Subscribed and sworn to before me this 3d day of July, 1915.

[Notarial Seal]

E. H. GUIE,

Notary Public in and for the State of Washington,
Residing at Seattle.

Receipt of a copy and due service hereof admitted this 6th day of July, 1915.

WM. HICKMAN MOORE,
Attorney for Trustee.

[Indorsed]: Affidavit in Support of Petition to Vacate Judgment of Adjudication. Filed in the United States District Court, Western District of Washington. July 8, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [10]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 5235.

In the Matter of the NONPAREIL CONSOLIDATED COPPER COMPANY, a Bankrupt.

**Petition [of R. H. Ramsey] to Vacate Adjudication
of Bankruptcy.**

Comes now R. H. Ramsey and petitions this Court and respectfully shows :

1. That petitioner previous to the filing of the petition in bankruptcy herein and at the time of the filing of said petition was and now is a stockholder of the said Nonpareil Consolidated Copper Company and the owner of 4 thousand shares of the capital stock in said company.

2. That on the 4th day of March, 1914, the said Nonpareil Consolidated Copper Company was adjudicated a bankrupt by this Court.

3. That the petition in bankruptcy herein was made and filed without any notice or knowledge on the part of petitioner and without any meeting of the stockholders, nor was there any notice given by the board of trustees or other authorized persons of any meeting of the stockholders for such purpose or any purpose.

4. That this Honorable Court did not have jurisdiction to make and enter said order of adjudication on the ground and for the reason that the stockholders of said corporation never authorized or empowered the trustees of said corporation to file the petition in bankruptcy herein.

5. The said Nonpareil Consolidated Copper Company is a corporation organized under the laws of the State of Washington, with its principal place of business at Everett, Snohomish County. [11] Washington. That said corporation in violation of

the statutes of the State of Washington has not had nor did it have at the time of filing the petition in bankruptcy herein, nor had it now, as one of its trustees, a resident of the State of Washington, and all of said trustees, as your petitioner alleges and believes, are now and were before and at the time of the making and filing of said petition in bankruptcy non-residents of the State of; that it does not appear from said petition that the board of trustees of said corporation or the president, Simon P. Ecki, who verified the said petition in bankruptcy, were ever authorized to make and file said petition and this petitioner alleges that said petition in bankruptcy was filed without authority from the stockholders.

6. That among the assets of said corporation there are 470 acres of valuable timber land on which there is situated about 32 million feet of timber worth at least \$2.00 per thousand; that said timber land is situated near Index, Snohomish County, Washington; that said timber land and all the assets of said corporation were sold by the trustee in bankruptcy on the 24th day of June, 1915, and said sale is set for confirmation for June 28, 1915, and unless ordered and restrained by this Court the said sale of said assets of said corporation will be confirmed and said property delivered to the purchaser thereof, to the great loss and detriment of said corporation and of this stockholder and others similarly situated. That the said petition in bankruptcy was made and filed herein in

fraud of this petitioner as a stockholder and other stockholders similarly situated.

R. H. RAMSAY,
Petitioner.

E. H. GUIE,
Attorney for Petitioner. [12]

United States of America,
Western District of Washington,
Northern Division,—ss.

R. H. Ramsay, being first duly sworn, on oath says: That he is the petitioner named in the foregoing petition to vacate adjudication of bankruptcy; that he has read the same, knows the contents thereof, and believes the same to be true.

R. H. RAMSAY.

Subscribed and sworn to this 26th day of June, 1915.

[Seal] WM. H. PERRY,
Notary Public in and for the State of Washington,
Residing at Sedro Woolley, in Skagit County,
Wash.

[Indorsed]: Petition to Vacate Adjudication of Bankruptcy. Filed in the United States District Court, Western District of Washington. June 29, 1915. Frank L. Crosby, Clerk. By ———, Deputy. [13]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 5235.

In the Matter of the NONPAREIL CONSOLI-
DATED COPPER COMPANY, a Bankrupt.

Affidavit of R. H. Ramsay.

United States of America,
Western District of Washington,
Northern Division,—ss.

R. H. Ramsay, being first duly sworn, on oath deposes and says: That he is one of the petitioners who has filed a petition to vacate the judgment adjudicating the Nonpareil Consolidated Copper Company a bankrupt herein; that the allegations contained in said petition are true and correct; that affiant is now and previous to and at the time the corporation was adjudicated a bankrupt, was a stockholder in the said Nonpareil Consolidated Copper Company and the owner of four thousand shares of the capital stock in said company; that the petition in bankruptcy herein was made and filed without any notice or knowledge on the part of this affiant and without any meeting of the stockholders for that purpose, nor was there any notice given by the board of trustees or other authorized persons of any meeting of the stockholders for such purpose; that this affiant did not know that said corporation was adjudged a bankrupt until about the 1st day of Feb., 1915; that the stockholders of said corporation never authorized or em-

powered the trustees of said corporation to file the petition in bankruptcy herein; that the principal place of business of said corporation is in Everett, Washington, and said corporation is organized under the laws of the State of Washington. That said corporation in violation of the statutes of the State of Washington has not had nor did it have at the time of filing the petition in [14] bankruptcy herein nor has it now as one of its trustees a resident of the State of Washington, and all of its trustees, as affiant is informed and alleges the fact to be, are now and were before and at the time of the making and filing of said petition in bankruptcy nonresidents of the State of Washington. That this affiant has a subsisting interest in the assets of said corporation; that said petition in bankruptcy was made and filed herein in fraud of this affiant as a stockholder and other stockholders similarly situated.

R. H. RAMSAY.

Subscribed and sworn to before me this 3d day of July, 1915.

[Notarial Seal]

WM. H. PERRY,

Notary Public in and for the State of Washington,
Residing at Sedro Woolley, Skagit County,
Wash.

Receipt of a copy and due service hereof admitted this 6th day of July, 1915.

WM. HICKMAN MOORE,

Attorney for Trustee.

[Indorsed]: Affidavit in Support of Petition to Vacate Judgment of Adjudication. Filed in the United States District Court, Western District of

Washington. July 8, 1915. Frank L. Crosby, Clerk.
By E. M. L., Deputy. [15]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 5235.

In the Matter of the NONPAREIL CONSOLI-
DATED COPPER COMPANY, a Bankrupt.
**Intervening Petition of Dora A. Ramsay to Vacate
the Judgment of Adjudication.**

Comes now Dora A. Ramsay and by this her inter-
vening petition to the petition of R. H. Ramsay for
the vacation of the judgment adjudicating the Non-
pareil Consolidated Copper Company, a bankrupt,
respectfully shows:

1. That petitioner previous to the filing of the
petition in bankruptcy herein and at the time of the
filing of said petition was and now is a stockholder
of the said Nonpareil Consolidated Copper Company
and the owner of one thousand shares of the capital
stock in said company.

2. That on the 4th day of March, 1914, the said
Nonpareil Consolidated Copper Company was ad-
judicated a bankrupt by this Court.

3. That the petition in bankruptcy herein was
made and filed without any notice or knowledge on
the part of petitioner and without any meeting of the
stockholders, nor was there any notice given by the
board of trustees or other authorized persons of any

meeting of the stockholders for such purpose or any purpose.

4. That this Honorable Court did not have jurisdiction to make and enter said order of adjudication on the ground and for the reason that the stockholders of said corporation never authorized or empowered the trustees of said corporation to file the petition in bankruptcy herein. [16]

5. That said Nonpareil Consolidated Copper Company is a corporation organized under the laws of the State of Washington, with its principal place of business at Everett, Snohomish County, Washington. That said corporation in violation of the statutes of the State of Washington has not had nor did it have at the time of filing the petition in bankruptcy herein, nor has it now, as one of its trustees, as your petitioner alleges and believes, are now and were before and at the time of the making and filing of said petition in bankruptcy nonresidents of the State of Washington; that it does not appear from said petition that the board of trustees of said corporation or the president, Simon P. Ecki, who verified the said petition in bankruptcy, were ever authorized to make and file said petition, and this petitioner alleges that said petition in bankruptcy was filed without authority from the stockholders.

6. That among the assets of said corporation there are 470 acres of valuable timber land on which there is situated about 32 million feet of timber worth at least \$20.00 per thousand; that said timber land is situated near Index, Snohomish County, Washington; that said timber land and all the assets of said

corporation were sold by the trustee in bankruptcy on the 24th day of June, 1915; that this petitioner has a subsisting interest in the assets of said corporation as a stockholder; that the said petition in bankruptcy was made and filed herein in fraud of this petitioner as a stockholder and other stockholders similarly situated.

DORA A. RAMSAY,
Petitioner.

E. H. CUIE,
Attorney for Petitioner. [17]

United States of America,
Western District of Washington,
Northern Division,—ss.

Dora A. Ramsay being first duly sworn, on oath says: That she is the petitioner named in the foregoing petition; that she has read the same, knows the contents thereof, and believes the same to be true.

DORA A. RAMSAY.

Subscribed and sworn to this 3d day of July, 1915.

[Notarial Seal]

WM. H. PERRY,
Notary Public in and for the State of Washington,
Residing at Sedro Woolley, Skagit Co., Wash.

Receipt of a copy and due service hereof admitted this 6th day of July, 1915.

WM. HICKMAN MOORE,
Attorney for Trustee.

[Indorsed]: Intervening Petition. Filed in the United States District Court, Western District of Washington. July 8, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [18]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 5235.

In the Matter of the NONPAREIL CONSOLI-
DATED COPPER COMPANY, a Bankrupt.

Restraining Order.

In this cause the petitions of R. H. Ramsay and N. Rudebeck, stockholders of the Nonpareil Consolidated Copper Company, have been filed herein praying for the cancellation of the judgment of the Court entered herein adjudging the Nonpareil Consolidated Copper Company a bankrupt, and it appearing to the Court that the trustee in bankruptcy has sold the assets of said corporation and is about to execute a deed therefor, and the Court being duly advised in the premises,

IT IS ORDERED that the referee in bankruptcy and the trustee are hereby enjoined from proceeding further with said sale and the execution of a deed therefor until the further order of this Court and that the 7th day of July, 1915, at the hour of ten o'clock A. M. is hereby fixed as the date for hearing of the said petitions to vacate the said judgment adjudicating the said Nonpareil Consolidated Copper Company a bankrupt, a copy of this order to be served upon the trustee and referee and representative of board of trustees of bankrupt Co.

Done in open court this 29th day of June, 1915.

JEREMIAH NETERER,

Judge.

[Endorsed]: Restraining Order. Filed in the United States District Court, Western District of Washington. June 29, 1915. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy. [19]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 5235.

In the Matter of the NONPAREIL CONSOLI-
DATED COPPER COMPANY, a Bankrupt.

Affidavit of Service.

United States of America,
Western District of Washington,
Northern Division,—ss.

J. A. Guie, being first duly sworn, on oath deposes and says: That he is and at all the times herein mentioned was a citizen of the United States, over the age of twenty-one years. That he is not a party to the above-entitled action and is competent to be a witness therein. That he served a certified copy of the Restraining Order issued in the above-entitled court on the 29th day of June, 1915, by the Honorable Jeremiah Neterer, Judge of said court, upon Ciscero Hawkins, personally, as referee in bankruptcy, in said cause, and upon W. P. Sanderson, personally, trustee of said bankrupt, by delivering to and leaving with said Ciscero Hawkins, personally, referee as aforesaid, and delivering to and leaving with said W. P. Sanderson, Trustee as aforesaid, and each of them a true and correct copy of the original order,

certified to by the clerk of said court as such, in the City of Seattle, King County, Washington, upon the 29th day of June, 1915, and that he deposited a certified copy of said restraining order in the United States postoffice at Seattle, King County, Washington, upon the 3d day of July, 1915, addressed to Palmer Kennedy, representative of board of trustees of bankrupt company, at 913 Fidelity Building, Tacoma, Washington, the postage thereon being duly prepaid.

J. A. GUIE.

Subscribed and sworn to before me this 3d day of July, 1915.

E. H. GUIE,

Notary Public in and for the State of Washington,
Residing at Seattle, King County, Washington.
[20]

[Indorsed]: Affidavit of Service. Filed in the United States District Court, Western District of Washington. July 23, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [21]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 5235.

In the Matter of NONPAREIL CONSOLIDATED
COPPER COMPANY, a Bankrupt.

**Motion to Dismiss Petition of N. Rudebeck to
Vacate Adjudication to Dissolve Restraining
Order.**

Comes now W. P. Sanderson as Trustee in Bank-

ruptcy herein and moves this Honorable Court to dismiss the petition of N. Rudebeck to vacate the adjudication of bankruptcy herein, and to dissolve the restraining order obtained and issued herein on June 29, 1915, for the reason that it appears upon the face of said petition that the facts therein stated are insufficient to constitute a valid cause of action or to entitle the petitioner to the relief therein prayed for, or to any relief.

W. P. SANDERSON,
Trustee in Bankruptcy.

WM. HICKMAN MOORE,
Solicitor for Trustee.

Due service of the within motion acknowledged this 6th day of July, 1915.

E. H. GUIE,
Attorney for N. Rudebeck.

[Indorsed]: Motion to Dismiss Petition of N. Rudebeck to Vacate Adjudication and to Dissolve Restraining Order. Filed in the United States District Court, Western District of Washington. July 6, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [22]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 5235.

In the Matter of NONPAREIL CONSOLIDATED
COPPER COMPANY, a Bankrupt.

**Motion to Dismiss Petition of R. H. Ramsay to
Vacate Adjudication and to Dissolve Restraining
Order.**

Comes now W. P. Sanderson as Trustee in Bankruptcy herein and moves this Honorable Court to dismiss the petition of R. H. Ramsay to vacate the adjudication of bankruptcy herein, and to dissolve the restraining order obtained and issued herein on June 29th, 1915, for the reason that it appears upon the face of said petition that the facts therein stated are insufficient to constitute a valid cause of action or to entitle the petitioner to the relief therein prayed for, or to any relief.

W. P. SANDERSON,
Trustee in Bankruptcy.

WM. HICKMAN MOORE,
Solicitor for Trustee.

Due service of the within motion acknowledged
this 6th day of July, 1915.

E. H. GUIE,
Attorney for R. H. Ramsay.

[Indorsed]: Motion to Dismiss Petition of R. H. Ramsay to vacate Adjudication and to Dissolve Restraining Order. Filed in the United States District Court, Western District of Washington. July 6, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [23]

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 5235.

In the Matter of NONPAREIL CONSOLIDATED
COPPER COMPANY, a Bankrupt.

**Order [Sustaining Motions to Vacate Order, Adjudi-
cating Petitioner Bankrupt, etc.; Dismissing
Petitions of N. Rudebeck and R. H. Ramsay and
Intervening Petition of Dora A. Ramsay; and
Dissolving Restraining Order].**

Be it remembered that on this day the motion of W. P. Sanderson, trustee in bankruptcy herein, to dismiss the petitions of N. Rudebeck and R. H. Ramsay and the intervening petition of Dora A. Ramsay to vacate the order made and entered herein on the 4th day of March, 1914, adjudicating Nonpareil Consolidated Copper Company, a bankrupt, and to dissolve the order heretofore, to wit, on the 29th day of June, 1915, made herein, restraining the referee and trustee in bankruptcy from proceeding further in the administration of the estate of the bankrupt, came on duly and regularly for hearing, the petitioners and intervening petitioner appearing by E. H. Guie, Esq., their attorney and solicitor, and the trustee appearing by Wm. Hickman Moore, Esq., his attorney and solicitor, and the Court having heard said petitions and motion read, and the statements and arguments of the attorneys and solicitors,

and being now fully advised in the law and the premises,

IT IS ORDERED, CONSIDERED, ADJUDGED AND DECREED, that said motions be sustained; that the said petitions of N. Rudebeck and R. H. Ramsay, and the said intervening petition of Dora A. Ramsay be, and the same hereby are, dismissed, and that the said restraining order heretofore made herein on the 29th day of June, 1915, be, and the same hereby is, dissolved. [24]

To which order the said petitioners jointly and severally excepted and their exceptions are allowed.

Done in open court this 8th day of July, A. D. 1915.

EDWARD E. CUSHMAN,
Judge.

Due service of the within Order acknowledged this 8th day of July, 1915.

E. H. GUIE,
Attorney for Petitioners, N. Rudebeck et al.

[Indorsed]: Order Dismissing Petitions of N. Rudebeck et al., and Dissolving Restraining Order. Filed in the United States District Court, Western District of Washington. July 8, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [25]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 5235.

In the Matter of NONPAREIL CONSOLIDATED
COPPER COMPANY, Bankrupt.

Certificate of Clerk U. S. District Court to Record.
United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing and attached, to be a full, true and correct copy of Petition (omitting Schedules), Adjudication, Petitions of N. Rudebeck and R. H. Ramsey and Intervening Petition of Dora A. Ramsey to Vacate Adjudication, and Affidavit of N. Rudebeck in Support of his Petition and Affidavit of R. H. Ramsay, Order to Show Cause and Staying Sale, Affidavit of Service of J. A. Guie, Motions of W. T. Sanderson, Trustee, to Dismiss Petitions to Vacate, and Order Dismissing Petitions to Vacate, as the originals thereof appear on file in said Court at the City of Seattle, Washington, in said District.

Attest my official signature and the seal of the said District Court, at the City of Seattle, Washington, July 24, 1915.

[Seal]

FRANK L. CROSBY,
Clerk United States District Court. [26]

[Endorsed]: No. 2624. United States Circuit Court of Appeals for the Ninth Circuit. N. Rudebeck, R. H. Ramsay and Dora A. Ramsay, Petitioners, vs. W. P. Sanderson, as Trustee in Bankruptcy of the Nonpareil Consolidated Copper Company, and the Nonpareil Consolidated Copper Company, a Corporation, Respondents. In the Matter of Nonpareil Consolidated Copper Company, Bankrupt. Transcript of Record in Support of Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the Western District of Washington, Northern Division.

Filed July 28, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.